

APPEAL NO. 020448
FILED APRIL 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 4, 2002. In response to the issues, the hearing officer found that the respondent/cross-appellant (claimant) sustained a compensable injury to the lumbar and thoracic spine but not to the L5-S1 level of the lumbar spine. The appellant/cross-respondent (carrier) appealed the determination that the thoracic spine was injured. The claimant appealed the omission of the herniated lumbar disc from the compensable injury. Both parties responded to the other party's appeal.

DECISION

Affirmed.

The claimant contended that after she had been mopping a floor at her workplace, with a side-to-side motion, she began to experience back pain. This occurred during the morning of _____, and she was sent to the company doctor later that morning. She said she was diagnosed with a back sprain and released to work with no restrictions. However, when the pain persisted, she sought treatment by her own choice of doctor. She was taken off work, and a July 11, 2001, MRI showed degenerative disc disease and a herniated lumbar disc at L5-S1.

Early notes and a diagram of the area of pain, including physical therapy notes, reported the thoracic area as a region with pain.

The claimant testified about being involved in a minor motor vehicle accident that happened "around" June 4. She was bumped from behind by a car driven by a coworker. Several coworkers corroborated the lack of seriousness of the accident.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

THE CARRIER'S APPEAL

The carrier did not appeal any findings about the lumbar spine, but appealed the hearing officer's finding of fact that the claimant injured her thoracic as well as her lumbar region while cleaning the floor. It is not incumbent upon a hearing officer to render a diagnosis when the general issue is posed as to whether the claimant sustained "a compensable injury," but a finding of a specific injury that is made should be supported by either the testimonial or medical evidence. There was no testimonial assertion of a thoracic injury. However, having reviewed the earliest medical records after the injury occurred, we cannot say that the hearing officer's conclusion of a thoracic injury lacks evidentiary support.

THE CLAIMANT'S APPEAL

The second issue was somewhat miscast by use of the words "extend to"; what the parties were disputing was not whether an initial compensable injury grew to include, as a natural result, a disc herniation at the L5-S1 level, but whether the defect at that level was part of the injury that occurred. The hearing officer's conclusion that the disc was not itself part of what he apparently believed was a strain/sprain is not so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust. We therefore affirm the decision and order on all appealed points.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**DR. RICHARD MIDDLETON
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Susan M. Kelley
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Judge